

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

UNITED STATES OF AMERICA	§	
v.	§	CRIMINAL ACTION NO. 6:06cr27
SIMON RICARTE BALDERAS, JR., ET AL.	§	

REPORT AND RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

On May 2, 2007, the Court referred ancillary forfeiture proceedings in the above-styled case to the undersigned (see [document #876](#)). Included in the referred ancillary forfeiture proceedings is a [Petition Claiming Superior Interest in Property Subject to Preliminary Forfeiture Order filed by Gina Balderas and Simon Balderas, Sr. \(document #667\)](#). The ancillary forfeiture proceedings were referred to the undersigned for a hearing and proposed findings of fact and recommendations as to their disposition.

On September 17, 2007, the Government filed a [notice](#) stating that the claims concerning the Petition Claiming Superior Interest in Property Subject to Preliminary Forfeiture Order filed by Gina Balderas and Simon Balderas, Sr. had been settled. By [Order](#) issued on September 19, 2007, the Government's [Motion to Continue Hearing on Claims by Gina and Simon Balderas, Sr.](#) was granted. The undersigned proceeded with a hearing on September 19, 2007 on the claims that were filed by Glenda Thomas, Sally Whittenberger and Juanita Gamez. An [Order](#) was issued on October 28, 2007 granting the Government's [Motion to Dismiss Petition of Glenda Thomas and Sally Whittenberger \(document #803\)](#) and the [Motion to Dismiss Petition of Juanita Gamez \(document #847\)](#).

The continuance of the hearing as to the claims by Gina and Simon Balderas, Sr. was granted to give the parties time to finalize their settlement and to file an appropriate motion to dismiss the petition upon finalization of the settlement. It appearing that the settlement has been finalized, as reflected by the [Consent Judgment](#) entered in a related civil action styled *United States of America v. \$2,500.00 in United States Currency, et al.*, Civil Action No. 6:06cv436, the undersigned issued an [Order](#) on December 12, 2007 directing the Government, as the movant on the motion to continue the hearing as to the claims filed by Gina and Simon Balderas, Sr., to submit either a written status report or, if the settlement has been finalized, to file an appropriate motion to dismiss the petition. On December 18, 2007, the Government filed a [Motion to Dismiss](#) Government's Criminal Forfeiture Claim and Petition Claiming Superior Interest in Property Subject to Forfeiture (document #1111). To date, no response has been filed. In light of the previously filed [Consent Judgment](#), the Government's present motion should be granted.

Recommendation

It is recommended that the Government's [Motion to Dismiss](#) Government's Criminal Forfeiture Claim and Petition Claiming Superior Interest in Property Subject to Forfeiture Order (document #1111) be granted.

Within ten (10) days after receipt of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within ten days after service shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except upon grounds of plain

error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Assn.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

So **ORDERED** and **SIGNED** this **8** day of **January, 2008**.



JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE